

TMDL “Daily” Loads

Implications from the recent DC
Circuit Court Decision

Jutta Schneider



Summary of DC Circuit Court Decision

- Friends of the Earth v. EPA et al, No. 05-5015
- April 25, 2006
- Finding: Two TMDLs for the Anacostia River do not comply with CWA because they were not expressed as daily loads
 - Impacts on TMDL development?
 - Implications for NPDES permits?

EPA Expectations for “Daily” Load

- Uncertainty regarding other courts following suit on daily load issue
- EPA recommends that
“all TMDLs and associated load allocations and wasteload allocations be expressed in terms of daily time increments.”

(Draft EPA memorandum, July 2006)

EPA Expectations for “Daily” Load, cont.

- Options for flexibility suggested in draft memo:
 - Minimum and maximum daily loads
 - Average daily loads
 - Differing daily loads depending on season, or on wet vs. dry conditions

EPA Expectations for “Daily” Load, cont.

- Options for flexibility suggested in draft memo, cont.:
 - Expressed as functions of dynamic factors such as water body flow
 - Example load duration curve approach
 - Expressed as table or graph based on concentration-based water quality standard and daily stream flow

EPA Expectations for NPDES Permit Implications

- No expressed or implied statutory requirement to express NPDES limits in daily terms
- Full array of required and discretionary tools still available to NPDES permitting authority, incl.
 - Establishing weekly limits for POTWs
 - Incorporating BMPs into NPDES permits where numeric limits are impracticable to calculate

EPA Expectations for NPDES Permit Implications, cont.

- “Consistent with the assumptions and requirements of any available wasteload allocation”
- Assumptions can be defined explicitly for NPDES implementation, i.e.
 - “permit writer should have the flexibility to express the permit’s effluent limitations using a time frame in keeping with, and appropriate to, the water body and pollutant in question and the applicable water quality standard”
 - TMDL can include alternative temporal expressions of the total load and wasteload as implementation assumptions

EPA Recommendations For Existing TMDLs and TMDLs in Progress

- Revision of approved TMDLs is lower priority than TMDL development pursuant to state TMDL development schedules
- Revision of TMDLs should be consistent with recommendations

EPA Recommendations For Existing TMDLs and TMDLs in Progress

- TMDLs in progress should
 - Include daily loads, or
 - Include documentation on how the TMDL would be expressed as daily loads, or
 - Be assigned daily loads by EPA

Example South Run TMDL

Segment	Parameter	TMDL	WLA	LA	MOS
South Run	Phosphorus (t/year)	0.562	0.038	0.496	0.028
	Phosphorus (t/day)	0.0015	0.0001	0.00135	0.00007



Starting with EPA approvals dated 8/2/06, daily loads are calculated by EPA as annual load divided by 365 and included in Decision Rationale.

EPA Recommendations For Existing TMDLs and TMDLs in Progress

- States should consult with EPA early in development process to determine appropriate approaches
- EPA technical support documents to be forthcoming, but:
- Draft EPA memorandum has not yet been finalized